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 The Upper Deck Company

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANIPLEX, INCORPORATED, a Japanese
 corporation,

 Plaintiff and Counter-Defendant,

 vs.

 THE UPPER DECK COMPANY, a Nevada
 corporation,

 Defendant and
 Counterclaimant.

Case No. 2:08-CV-00442-HDM-PAL

**DECLARATION OF JORDAN
 MENDOZA IN SUPPORT OF
 DEFENDANT AND
 COUNTERCLAIMANT THE UPPER
 DECK COMPANY'S OPPOSITION TO
 ANIPLEX, INC.'S MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

[Oral Argument Requested]

[Memorandum of Points and Authorities in
 Opposition; Statement of Genuine Issues;
 Evidentiary Objections; Notice of Manual
 Filing of Evidence and Declarations of John
 Sepenuk and Kristina Fredericks filed
 concurrently herewith]

DECLARATION OF JORDAN MENDOZA

I, Jordan Mendoza, declare as follows:

1. I am a case clerk with the law firm of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, counsel of record for defendant and counterclaimant The Upper Deck Company ("Upper Deck") in this action. The facts set forth herein are of my own personal knowledge, except for those matters set forth on information and belief, and as to those matters I am informed and believe them to be true.

2. I have reviewed various correspondence between Upper Deck and Aniplex, Inc. ("Aniplex") regarding Upper Deck's creative requests and/or instructions in connection with the "Kiba" anime series. I have also viewed all episodes of the "Kiba" series. True and correct copies of the DVDs containing all 51 "Kiba" episodes are enclosed as Exhibits 109 through 113 respectively, to the Declaration of Kristina Fredericks Regarding Manual Filing in Opposition to Aniplex, Inc.'s Motion for Partial Summary Judgment which is being filed concurrently herewith. The "Kiba" episodes I viewed included English subtitles. I also reviewed the "Kiba" episodes referenced in my declaration on non-subtitled DVDs produced by Aniplex's expert Masaki Kaifu in response to a subpoena in this action and concluded that the substance of such episodes was the same as the English-subtitled versions I reviewed.

3. In particular, I watched episodes of the "Kiba" series, or in some cases particular scenes, for which Upper Deck had requested creative changes. By doing so, I was able to determine that Aniplex failed to make a number of Upper Deck's requested changes to the content of the "Kiba" anime series. Some representative examples of scenes or content for which Aniplex failed to make Upper Deck's requested changes are set forth below:

4. I have reviewed the document entitled "Kiba Episode 2 Comments," a true and correct copy of which is attached hereto as Exhibit 53. Exhibit 53 is a portion of a document that was produced by Aniplex during discovery in this matter and was marked as Exhibit 9 at the deposition of Asa Suehira-Weintraub taken on February 11, 2010 (the "Suehira Deposition"). Such document reflects a request by Upper Deck to change a scene in Episode 2 of the "Kiba" series so

1 that the characters Zico and Armor Man identify the “shards” on their first use. Upper Deck
2 indicated that it did not approve the episode unless this scene was changed. (Exhibit 53 at
3 ANX030737.) I have reviewed the entirety of each “Kiba” episode and concluded that such change
4 was not made in Episode 2. For example, during the battle between “Zico” and “Armor Man” in
5 Episode 2, at approximately 3:43 into that episode, both characters use “shards” to battle. At no
6 point in the battle does either character name any “shard” spells when they are initially used, and
7 no “shard” spells are named during use in the entire series.

8 5. The document entitled “Kiba Episode 2 Comments” (Exhibit 53) also reflects a
9 request by Upper Deck to change a scene in Episode 2 of the “Kiba” series in which a thief steals a
10 “spirit” from the character Roya by simply touching her “shard” holder to a scene in which the
11 thief uses a specialized “shard” to steal the “spirit.” Upper Deck told Aniplex that it did not
12 approve the episode unless this scene was changed. (Exhibit 53 at ANX030745.) Based on my
13 review of each of the “Kiba” episodes, such change was not made in Episode 2. For example, in
14 Episode 2 at approximately 20:11 into that episode, the thief does not use a “shard” to steal the
15 “spirit,” but instead attacks Roya and says that he will kill her to take her spirit.

16 6. The document entitled “Kiba Episode 2 Comments” (Exhibit 53) also reflects a
17 general instruction by Upper Deck to change the “Kiba” episodes so that any conventional weapons
18 are used very little and that instead the battles focus on the use of “shard” spells and “spirits.”
19 Based on my review of each of the “Kiba” episodes, such change was not made in Episode 2 nor
20 was it made throughout the series. For example, conventional weapons take prominence over
21 “shard” spells throughout the entire the series, including in particular episodes 2-10, 16-18, 39, 40,
22 45-47 and 49-51.

23 7. I have reviewed the document entitled “Comments on the English Translation of
24 Script 1 of Kiba,” a true and correct copy of which is attached hereto as Exhibit 54. Exhibit 54 is
25 also a portion of the document that was marked as Exhibit 9 at the Suehira Deposition. Such
26 document reflects a request by Upper Deck to change a scene in Episode 1 of the “Kiba” series in
27 which teachers are killed to a scene in which the teachers are knocked unconscious because the
28 depiction of innocents dying was unacceptable. Upper Deck told Aniplex that it did not approve

1 the episode unless this scene was changed. (Exhibit 54 at ANX30750.) Based on my review of
2 each of the "Kiba" episodes, such change was not made in Episode 1. For example, in Episode 1 at
3 approximately 14:59 into that episode, a school principal is killed by being stabbed through the
4 abdomen with a sword.

5 8. I have reviewed a certified translation of an email from Akio Sugaya of Upper Deck
6 Japan ("UDJ") to Naritoshi Sato and Eichi Kamagata of Aniplex dated September 28, 2005, a true
7 and correct copy of which is attached hereto as Exhibit 55. The certified translation together with
8 the original Japanese language version of Exh. 55 was produced by Aniplex during discovery in
9 this matter and was marked as Exhibit 49A and B at the deposition of Naritoshi Sato taken on
10 March 2 and 3, 2010 (the "Sato Deposition"). Such email reflects a request by Upper Deck to
11 change a scene in Episode 1 of the "Kiba" series in which one character prepares and uses several
12 shards at once to a scene in which the character uses only one shard at a time. Such change would
13 create cohesion between the anime and TCG, as only one shard can be used at a time in the TCG.
14 Based on my review of each of the "Kiba" episodes, such change was not made in Episode 1, and
15 the act of using several shards at once continues throughout the series. For example, in Episode 1,
16 at approximately 12:40 into that episode, a character uses three shards at once. Multiple shards are
17 also used at once in Episode 13 at approximately 12:22 into that episode, Episode 42 at
18 approximately 16:26 into that episode and Episode 51 at approximately 15:58 into that episode,
19 among others.

20 9. I have reviewed a certified translation of an email from Kenichi Oshima of UDJ to
21 Naritoshi Sato, Syuko Yokoyama and Eichi Kamagata of Aniplex dated February 9, 2006, a true
22 and correct copy of which is attached hereto as Exhibit 56. The certified translation together with
23 the original Japanese language version of Exh. 56 was produced by Aniplex during discovery in
24 this matter and was marked as Exhibit 59A and B at the Sato Deposition. Such email reflects a
25 request by Upper Deck to change a scene in Episode 9 of the "Kiba" series in which two enemy
26 warriors summon one monster to a scene in which one enemy summons two monsters. Based on
27 my review of the "Kiba" episodes, such change was not made in Episode 9. For example, in
28

1 Episode 9, at approximately 5:38 into that episode, two enemy warriors summon one monster each.
2 At no point in this episode does one enemy summon two monsters.

3 10. I have reviewed a certified translation of an email from Masaru Ijichi, a consultant
4 of UDJ, to Syuko Yokoyama and Eichi Kamagata of Aniplex dated April 4, 2006, a true and
5 correct copy of which is attached hereto as Exhibit 57. The certified translation together with the
6 original Japanese language version of Exh. 57 was produced by Aniplex during discovery in this
7 matter and was marked as Exhibit 79A and B at the deposition of Kyuko Yokoyama taken on April
8 12 and 13, 2010 (the "Yokoyama Deposition"). Such email reflects a request by Upper Deck to
9 change a scene in Episode 20 of the "Kiba" series so that the character Keith is not killed. Based
10 on my review of each of the "Kiba" episodes, such change was not made in Episode 20. For
11 example, in Episode 20, at approximately 21:56 into that episode, Keith is killed by being stabbed
12 through the stomach with a sword.

13 11. I have reviewed a certified translation of an email from Masaru Ijichi, a consultant
14 of UDJ, to Naritoshi Sato and Eichi Kamagata of Aniplex dated April 17, 2006, a true and correct
15 copy of which is attached hereto as Exhibit 58. The certified translation together with the original
16 Japanese language version of Exh. 58 was produced by Aniplex during discovery in this matter and
17 was marked as Exhibit 80A and B at the Yokoyama Deposition. Such email reflects a request by
18 Upper Deck to change a scene in Episode 21 of the "Kiba" series in which the character Roya is
19 practicing with her swords to a scene in which she is practicing with "shards." Based on my
20 review of each of the "Kiba" episodes, such change was not made in Episode 21. For example, in
21 Episode 21, at approximately 7:32 into that episode, Roya is seen swinging her weapons around
22 and does not practice her use of "shards." At no point in this episode does Roya practice using her
23 "shards."

24 12. I have reviewed a certified translation of an email from Masaru Ijichi, a consultant
25 of UDJ, to Syuko Yokoyama, Naritoshi Sato and Eichi Kamagata of Aniplex dated April 18, 2006,
26 a true and correct copy of which is attached hereto as Exhibit 59. The certified translation together
27 with the original Japanese language version of Exh. 59 was produced by Aniplex during discovery
28 in this matter and was marked as Exhibit 81A and B at the Yokoyama Deposition. Such email

1 reflects a request by Upper Deck to change a scene in Episode 23 of the "Kiba" series in which the
2 character Despara receives a blow from a weapon so that no inhumane depictions are shown.
3 Based on my review of the "Kiba" episodes, such change was not made in Episode 23. For
4 example, in Episode 23, at approximately 18:31 into that episode, Despara is shown with a knife in
5 her back.

6 13. I have reviewed a certified translation of an email from Yuko Hiroi of UDJ to Syuko
7 Yokoyama, Naritoshi Sato and Eichi Kamagata of Aniplex dated May 31, 2006, a true and correct
8 copy of which is attached hereto as Exhibit 60. The certified translation together with the original
9 Japanese language version of Exh. 60 was produced by Aniplex during discovery in this matter and
10 was marked as Exhibit 85A and B at the Yokoyama Deposition. Such email reflects a request by
11 Upper Deck to change Episode 26 of the "Kiba" series so that a flashback scene contains battles
12 with multiple spells and spirits. Based on my review of each of the "Kiba" episodes, such changes
13 to the flashback scene in Episode 26 were not made.

14 14. I have reviewed the entirety of all 51 "Kiba" episodes and concluded that battles
15 containing multiple "spirits" or "monsters" did not occur every 2.5 episodes. Multiple "spirit" or
16 "monster" battles did not take place in episodes 16-22, 32-34, and 36-39.

17 15. I have reviewed Episode 26 of the "Kiba" series and concluded that no "spirit" or
18 "shard" battles occur during the entirety of the episode.

19 16. I have reviewed Episode 1 of the "Kiba" series. At approximately 13:18 into that
20 episode, there is a scene in which a closet that the character Xed is locked in is set on fire.

21 17. I have reviewed Episode 1 of the "Kiba" series. At approximately 14:58 into that
22 episode, there is a scene in which a teacher stabs a principal through the stomach with a sword.

23 18. I have reviewed Episode 5 of the "Kiba" series. At approximately 22:16 into that
24 episode, there is a scene in which a man is executed by his son.

25 19. I have reviewed Episode 6 of the "Kiba" series. At approximately 17:16 into that
26 episode, there is a scene in which a man slashes an unarmed woman with his sword.

27 20. I have reviewed Episode 6 of the "Kiba" series. At approximately 18:02 into that
28 episode, there is a scene in which two men impale each other with swords.

1 21. I have reviewed Episode 10 of the "Kiba" series. At approximately 15:44 into that
2 episode, there is a scene in which a man's wife is dropped into a chasm and another man is thrown
3 off of a cliff.

4 22. I have reviewed Episode 16 of the "Kiba" series. At approximately 8:50 into that
5 episode, there is a scene in which a girl interrogates and stabs two captives with a knife.

6 23. I have reviewed Episode 17 of the "Kiba" series. At approximately 16:42 into that
7 episode, there is a scene in which a nurse and a doctor are killed with swords.

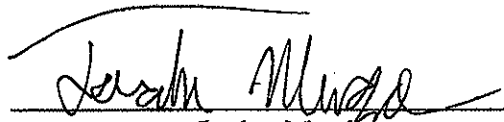
8 24. I have reviewed Episode 18 of the "Kiba" series. At approximately 19:22 into that
9 episode, there is a scene in which a girl is stabbed through the torso from behind.

10 25. I have reviewed Episode 23 of the "Kiba" series. At approximately 18:31 into that
11 episode, there is a scene in which a man stabs a woman in the back and is then stabbed himself.

12 26. I have reviewed Episode 38 of the "Kiba" series. At approximately 16:08 and 19:07
13 into that episode, there are scenes in which two groups of captive men, women, and children are
14 eaten alive by spirits.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on this 27th day of August 2010, at San Francisco, California.

17
18 
19 Jordan Mendoza